

JOHN BOEHNER  
Chairman  
8th District, Ohio

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## WHAT THE *BUCKLEY* DECISION MEANS FOR CAMPAIGN REFORM

***“In the free society ordained by our Constitution it is not the government, but the people -- individually as citizens and candidates and collectively as associations and political committees -- who must retain control over the quantity and range of debate on public issues in a political campaign.”***

*-- Buckley v. Valeo, 57, 424 US 1 (1976).*

The Supreme Court decision, *Buckley v. Valeo*, sets the standard for regulating the First Amendment rights of people involved in the political process. *Buckley* is the result of a lawsuit filed under expedited procedures by a group of plaintiffs representing all sides of the political spectrum. The plaintiffs included Sen. James Buckley (Conservative Party and Republican from New York), Sen. Eugene McCarthy (Democrat from Minnesota and former presidential candidate), American Conservative Union, and the American Civil Liberties Union. The lawsuit challenged the Federal Election Campaign Act of 1974 (FECA).

Congress passed FECA following Watergate and the fundraising controversies of the early 1970's. The new law required full disclosure of campaign contributions and expenditures, strict contribution and expenditure limits, and restrictions on the use of personal funds. Finally, the Act created the Federal Election Commission (FEC) and gave it the authority to enforce the new regulations.

The plaintiffs challenged the constitutionality of the law primarily under the Speech Clause of the First Amendment. Defenders of FECA, including the FEC and Common Cause, argued that the Act concerned money and equality, not speech.

In the current House debate on campaign reform, the House recognized the *Buckley* decision and other subsequent court cases that jealously protected the most basic of our Constitutional freedoms. The House soundly defeated the Gephardt proposal to amend the First Amendment and restrict political speech. In fact, only 29 members voted for the Gephardt amendment.

### ***The Court's Decision --***

In the *Buckley* decision, the Supreme Court reviewed the law section by section. Fundamentally, it found that FECA impacted free speech and free association. Moreover, the interest in equalizing the resources of candidates or making the election process more fair is impractical and insufficient to justify First Amendment infringement.

The Court struck down limits on campaign expenditures, independent expenditures by individuals and groups, and expenditures by a candidate from his or her personal funds. However, the Court upheld the contribution limits, record keeping and disclosure requirements and public financing of presidential campaigns established by the Act.

### ***The Court Found Unconstitutional --***

- \* **Limits on Campaign Expenditures.** It wrote that political expression is “at the core of our electoral process and the First Amendment freedoms” and limiting expenditures would adversely impact this freedom. (Id. at 39).
- \* **Restrictions on Independent Expenditures.** Under the law, only expenditures relative to a clearly identified candidate were restricted. The Court found that these limitations could be easily circumvented and would have little preventive effect on actual or apparent corruption. Secondly, since expenditures were made independent of any candidates, the danger that expenditures are given as a *quid pro quo* for commitments from the candidate is alleviated. (Id. at 48-49).
- \* **Limits on Candidate's Use of Personal Funds or Funds from Their Family.** The most basic reason for finding the provision which limits this resource unconstitutional is, “the First Amendment simply cannot tolerate [this] restriction upon the freedom of a candidate to speak without legislative limit on behalf of his own candidacy.” (Id. at 54).

## ***The Court Upheld --***

- \* **Contribution Limits.** Though contribution limits were found to interfere with the First Amendment right to association, the restrictions passed the test for constitutionality because limiting the appearance of or occurrence of corruption by large contributions was a significantly compelling interest. (Id. at 26-27).
- \* **Reporting and Disclosure Requirements.** These provisions were declared constitutional because of the importance of “ensuring voters are fully informed and to achieve through publicity the maximum deterrence to corruption and undue influence possible.” (Id. at 76).
- \* **Public Financing for Presidential Elections.** Challenges under the First and Fifth Amendment were struck down. The First Amendment challenge was rejected because of the important public interest in limiting the improper influence of large contributions. The Fifth Amendment challenge was rejected because the distinctions between major, minor and new parties did not violate the equal protection clause. (Id. at 85-108).

## **Sources of information:**

*Buckley v. Valeo* [424 US 1 (1976)].

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*Cases and Materials on Legislation Statutes and the Creation of Public Policy*, William N. Eskridge, Jr. and Philip P. Frickey, 1988.

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*Soft Money in Campaign Finance Reform*, CRS Issue Brief IB96036, March 31, 1997.

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